

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3342**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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ADOPTED MARCH 10, 2003

**Sponsored by:**

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**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

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**Assemblywoman Greenstein, Assemblyman Guear, Assemblywoman Heck,**

**Assemblymen Merkt, Scalera, Senators T.Kean, Cafiero, Allen,**

**Assemblymen Pennacchio and Chivukula**

**SYNOPSIS**

"Michael's Law;" imposes mandatory jail time and rehabilitation for third or subsequent drunk driving offenses.

**CURRENT VERSION OF TEXT**

As reported by the Senate Law and Public Safety and Veterans' Affairs Committee on November 24, 2003, with amendments.

**(Sponsorship Updated As Of: 1/13/2004)**

1 AN ACT concerning driving while under the influence, amending and  
2 supplementing R.S.39:4-50 and R.S.39:4-51.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. (New section) P.L. , c. <sup>1</sup>[(C. )]<sup>1</sup> shall be known and  
8 may be cited as "Michael's Law."

9  
10 2. R.S.39:4-50 is amended to read as follows:

11 39:4-50. (a) Except as provided in subsection (g) of this section,  
12 a person who operates a motor vehicle while under the influence of  
13 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,  
14 or operates a motor vehicle with a blood alcohol concentration of  
15 0.10% or more by weight of alcohol in the defendant's blood or  
16 permits another person who is under the influence of intoxicating  
17 liquor, narcotic, hallucinogenic or habit-producing drug to operate a  
18 motor vehicle owned by him or in his custody or control or permits  
19 another to operate a motor vehicle with a blood alcohol concentration  
20 of 0.10% or more by weight of alcohol in the defendant's blood shall  
21 be subject:

22 (1) For the first offense, to a fine of not less than \$250.00 nor  
23 more than \$400.00 and a period of detainment of not less than 12  
24 hours nor more than 48 hours spent during two consecutive days of  
25 not less than six hours each day and served as prescribed by the  
26 program requirements of the Intoxicated Driver Resource Centers  
27 established under subsection (f) of this section and, in the discretion  
28 of the court, a term of imprisonment of not more than 30 days and  
29 shall forthwith forfeit his right to operate a motor vehicle over the  
30 highways of this State for a period of not less than six months nor  
31 more than one year. For a first offense, a person also shall be subject  
32 to the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).

33 (2) For a second violation, a person shall be subject to a fine of  
34 not less than \$500.00 nor more than \$1,000.00, and shall be ordered  
35 by the court to perform community service for a period of 30 days,  
36 which shall be of such form and on such terms as the court shall deem  
37 appropriate under the circumstances, and shall be sentenced to  
38 imprisonment for a term of not less than 48 consecutive hours, which  
39 shall not be suspended or served on probation, nor more than 90 days,  
40 and shall forfeit his right to operate a motor vehicle over the highways  
41 of this State for a period of two years upon conviction, and, after the

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SLP committee amendments adopted November 24, 2003.

1 expiration of said period, he may make application to the <sup>1</sup>[Director  
2 of the Division of Motor Vehicles] administrator<sup>1</sup> for a license to  
3 operate a motor vehicle, which application may be granted at the  
4 discretion of the <sup>1</sup>[director] administrator<sup>1</sup>, consistent with subsection  
5 (b) of this section. For a second violation, a person also shall be  
6 required to install an ignition interlock device under the provisions of  
7 P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration  
8 certificate and registration plates revoked for two years under the  
9 provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

10 (3) For a third or subsequent violation, a person shall be subject  
11 to a fine of \$1,000.00, and shall be sentenced to <sup>1</sup>[90 days] <sup>1</sup>  
12 imprisonment [for a term of not less than 180 days, except that the  
13 court may lower such term for each day, not exceeding 90 days,  
14 served performing community service in such form and on such terms  
15 as the court shall deem appropriate under the circumstances] <sup>1</sup>for a  
16 term of not less than 180 days<sup>1</sup> in a county jail or workhouse <sup>1</sup>[and  
17 ordered by the court to participate], except that the court may lower  
18 such term for each day, not exceeding 90 days, served participating<sup>1</sup>  
19 in a <sup>1</sup>[90-day] <sup>1</sup>drug or alcohol inpatient rehabilitation program  
20 approved by the <sup>1</sup>[court] Intoxicated Driver Resource Center<sup>1</sup> and  
21 shall thereafter forfeit his right to operate a motor vehicle over the  
22 highways of this State for 10 years. For a third or subsequent  
23 violation, a person also shall be required to install an ignition interlock  
24 device under the provisions of P.L.1999, c.417 (C.39:4-50.16 et al.)  
25 or shall have his registration certificate and registration plates revoked  
26 for 10 years under the provisions of section 2 of P.L.1995, c.286  
27 (C.39:3-40.1).

28 As used in this section, the phrase "narcotic, hallucinogenic or  
29 habit-producing drug" includes an inhalant or other substance  
30 containing a chemical capable of releasing any toxic vapors or fumes  
31 for the purpose of inducing a condition of intoxication, such as any  
32 glue, cement or any other substance containing one or more of the  
33 following chemical compounds: acetone and acetate, amyl nitrite or  
34 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,  
35 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite  
36 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl  
37 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl  
38 alcohol, pentachlorophenol, petroleum ether, propyl <sup>1</sup>[nitrate] nitrite<sup>1</sup>  
39 or propyl nitrate or their isomers, toluene, toluol or xylene or any  
40 other chemical substance capable of causing a condition of  
41 intoxication, inebriation, excitement, stupefaction or the dulling of the  
42 brain or nervous system as a result of the inhalation of the fumes or  
43 vapors of such chemical substance.

44 Whenever an operator of a motor vehicle has been involved in an  
45 accident resulting in death, bodily injury or property damage, a police

1 officer shall consider that fact along with all other facts and  
2 circumstances in determining whether there are reasonable grounds to  
3 believe that person was operating a motor vehicle in violation of this  
4 section.

5 A conviction of a violation of a law of a substantially similar nature  
6 in another jurisdiction, regardless of whether that jurisdiction is a  
7 signatory to the Interstate Driver License Compact pursuant to  
8 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction  
9 under this subsection unless the defendant can demonstrate by clear  
10 and convincing evidence that the conviction in the other jurisdiction  
11 was based exclusively upon a violation of a proscribed blood alcohol  
12 concentration of less than 0.10%.

13 If the driving privilege of any person is under revocation or  
14 suspension for a violation of any provision of this Title or Title 2C of  
15 the New Jersey Statutes at the time of any conviction for a violation  
16 of this section, the revocation or suspension period imposed shall  
17 commence as of the date of termination of the existing revocation or  
18 suspension period. In the case of any person who at the time of the  
19 imposition of sentence is less than 17 years of age, the forfeiture,  
20 suspension or revocation of the driving privilege imposed by the court  
21 under this section shall commence immediately, run through the  
22 offender's seventeenth birthday and continue from that date for the  
23 period set by the court pursuant to paragraphs (1) through (3) of this  
24 subsection. A court that imposes a term of imprisonment for a first or  
25 second offense under this section may sentence the person so  
26 convicted to the county jail, to the workhouse of the county wherein  
27 the offense was committed, to an inpatient rehabilitation program or  
28 to an Intoxicated Driver Resource Center or other facility approved by  
29 the chief of the Intoxicated Driving Program Unit in the Department  
30 of Health and Senior Services[; provided that for]. For a third or  
31 subsequent offense a person shall not serve a term of imprisonment at  
32 an Intoxicated Driver Resource Center as provided in subsection (f).

33 A person who has been convicted of a previous violation of this  
34 section need not be charged as a second or subsequent offender in the  
35 complaint made against him in order to render him liable to the  
36 punishment imposed by this section on a second or subsequent  
37 offender, but if the second offense occurs more than 10 years after the  
38 first offense, the court shall treat the second conviction as a first  
39 offense for sentencing purposes and if a third offense occurs more than  
40 10 years after the second offense, the court shall treat the third  
41 conviction as a second offense for sentencing purposes.

42 (b) A person convicted under this section must satisfy the  
43 screening, evaluation, referral, program and fee requirements of the  
44 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program  
45 Unit, and of the Intoxicated Driver Resource Centers and a program  
46 of alcohol and drug education and highway safety, as prescribed by the

1 <sup>1</sup>[Director of the Division of Motor Vehicles] administrator<sup>1</sup>. The  
 2 sentencing court shall inform the person convicted that failure to  
 3 satisfy such requirements shall result in a mandatory two-day term of  
 4 imprisonment in a county jail and a driver license revocation or  
 5 suspension and continuation of revocation or suspension until such  
 6 requirements are satisfied, unless stayed by court order in accordance  
 7 with the Rules Governing the Courts of the State of New Jersey, or  
 8 R.S.39:5-22. Upon sentencing, the court shall forward to the Division  
 9 of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a  
 10 copy of a person's conviction record. A fee of \$100.00 shall be  
 11 payable to the Alcohol Education, Rehabilitation and Enforcement  
 12 Fund established pursuant to section 3 of P.L.1983, c.531  
 13 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

14 (c) Upon conviction of a violation of this section, the court shall  
 15 collect forthwith the New Jersey driver's license or licenses of the  
 16 person so convicted and forward such license or licenses to the  
 17 <sup>1</sup>[Director of the Division of Motor Vehicles] administrator<sup>1</sup>. The  
 18 court shall inform the person convicted that if he is convicted of  
 19 personally operating a motor vehicle during the period of license  
 20 suspension imposed pursuant to subsection (a) of this section, he shall,  
 21 upon conviction, be subject to the penalties established in R.S.39:3-40.  
 22 The person convicted shall be informed orally and in writing. A  
 23 person shall be required to acknowledge receipt of that written notice  
 24 in writing. Failure to receive a written notice or failure to acknowledge  
 25 in writing the receipt of a written notice shall not be a defense to a  
 26 subsequent charge of a violation of R.S.39:3-40. In the event that a  
 27 person convicted under this section is the holder of any out-of-State  
 28 driver's license, the court shall not collect the license but shall notify  
 29 forthwith the <sup>1</sup>[director] administrator<sup>1</sup>, who shall, in turn, notify  
 30 appropriate officials in the licensing jurisdiction. The court shall,  
 31 however, revoke the nonresident's driving privilege to operate a motor  
 32 vehicle in this State, in accordance with this section. Upon conviction  
 33 of a violation of this section, the court shall notify the person  
 34 convicted, orally and in writing, of the penalties for a second, third or  
 35 subsequent violation of this section. A person shall be required to  
 36 acknowledge receipt of that written notice in writing. Failure to  
 37 receive a written notice or failure to acknowledge in writing the  
 38 receipt of a written notice shall not be a defense to a subsequent  
 39 charge of a violation of this section.

40 (d) The <sup>1</sup>[Director of the Division of Motor Vehicles]  
 41 administrator<sup>1</sup> shall promulgate rules and regulations pursuant to the  
 42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
 43 in order to establish a program of alcohol education and highway  
 44 safety, as prescribed by this act.

45 (e) Any person accused of a violation of this section who is liable  
 46 to punishment imposed by this section as a second or subsequent

1 offender shall be entitled to the same rights of discovery as allowed  
2 defendants pursuant to the Rules Governing the Courts of the State of  
3 New Jersey.

4 (f) The counties, in cooperation with the Division of Alcoholism  
5 and Drug Abuse and the <sup>1</sup>[Division of Motor Vehicles] commission<sup>1</sup>,  
6 but subject to the approval of the Division of Alcoholism and Drug  
7 Abuse, shall designate and establish on a county or regional basis  
8 Intoxicated Driver Resource Centers. These centers shall have the  
9 capability of serving as community treatment referral centers and as  
10 court monitors of a person's compliance with the ordered treatment,  
11 service alternative or community service. All centers established  
12 pursuant to this subsection shall be administered by a counselor  
13 certified by the Alcohol and Drug Counselor Certification Board of  
14 New Jersey or other professional with a minimum of five years'  
15 experience in the treatment of alcoholism. All centers shall be required  
16 to develop individualized treatment plans for all persons attending the  
17 centers; provided that the duration of any ordered treatment or referral  
18 shall not exceed one year. It shall be the center's responsibility to  
19 establish networks with the community alcohol and drug education,  
20 treatment and rehabilitation resources and to receive monthly reports  
21 from the referral agencies regarding a person's participation and  
22 compliance with the program. Nothing in this subsection shall bar  
23 these centers from developing their own education and treatment  
24 programs; provided that they are approved by the Division of  
25 Alcoholism and Drug Abuse.

26 Upon a person's failure to report to the initial screening or any  
27 subsequent ordered referral, the Intoxicated Driver Resource Center  
28 shall promptly notify the sentencing court of the person's failure to  
29 comply.

30 Required detention periods at the Intoxicated Driver Resource  
31 Centers shall be determined according to the individual treatment  
32 classification assigned by the Intoxicated Driving Program Unit. Upon  
33 attendance at an Intoxicated Driver Resource Center, a person shall be  
34 required to pay a per diem fee of \$75.00 for the first offender program  
35 or a per diem fee of \$100.00 for the second offender program, as  
36 appropriate. Any increases in the per diem fees after the first full year  
37 shall be determined pursuant to rules and regulations adopted by the  
38 Commissioner of Health and Senior Services in consultation with the  
39 Governor's Council on Alcoholism and Drug Abuse pursuant to the  
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
41 seq.).

42 The centers shall conduct a program of alcohol and drug education  
43 and highway safety, as prescribed by the <sup>1</sup>[Director of the Division of  
44 Motor Vehicles] administrator<sup>1</sup>.

45 The Commissioner of Health and Senior Services shall adopt rules  
46 and regulations pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the  
2 purposes of this subsection.

3 (g) When a violation of this section occurs while:

4 (1) on any school property used for school purposes which is  
5 owned by or leased to any elementary or secondary school or school  
6 board, or within 1,000 feet of such school property;

7 (2) driving through a school crossing as defined in R.S.39:1-1 if  
8 the municipality, by ordinance or resolution, has designated the school  
9 crossing as such; or

10 (3) driving through a school crossing as defined in R.S.39:1-1  
11 knowing that juveniles are present if the municipality has not  
12 designated the school crossing as such by ordinance or resolution, the  
13 convicted person shall: for a first offense, be fined not less than \$500  
14 or more than \$800, be imprisoned for not more than 60 days and have  
15 his license to operate a motor vehicle suspended for a period of not  
16 less than one year or more than two years; for a second offense, be  
17 fined not less than \$1,000 or more than \$2,000, perform community  
18 service for a period of 60 days, be imprisoned for not less than 96  
19 consecutive hours, which shall not be suspended or served on  
20 probation, nor more than 180 days, except that the court may lower  
21 such term for each day, not exceeding 90 days, served performing  
22 community service in such form and on such terms as the court shall  
23 deem appropriate under the circumstances and have his license to  
24 operate a motor vehicle suspended for a period of not less than four  
25 years; and, for a third offense, be fined \$2,000, imprisoned for 180  
26 days <sup>1</sup>in a county jail or workhouse, except that the court may lower  
27 such term for each day, not exceeding 90 days, served participating in  
28 a drug or alcohol inpatient rehabilitation program approved by the  
29 Intoxicated Driver Resource Center,<sup>1</sup> and have his license to operate  
30 a motor vehicle suspended for a period of 20 years; the period of  
31 license suspension shall commence upon the completion of any prison  
32 sentence imposed upon that person.

33 A map or true copy of a map depicting the location and boundaries  
34 of the area on or within 1,000 feet of any property used for school  
35 purposes which is owned by or leased to any elementary or secondary  
36 school or school board produced pursuant to section 1 of P.L.1987,  
37 c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1)  
38 of this subsection.

39 It shall not be relevant to the imposition of sentence pursuant to  
40 paragraph (1) or (2) of this subsection that the defendant was unaware  
41 that the prohibited conduct took place while on or within 1,000 feet  
42 of any school property or while driving through a school crossing.  
43 Nor shall it be relevant to the imposition of sentence that no juveniles  
44 were present on the school property or crossing zone at the time of the  
45 offense or that the school was not in session.

46 (h) A court also may order a person convicted pursuant to

1 subsection a. of this section, to participate in a supervised visitation  
2 program as either a condition of probation or a form of community  
3 service, giving preference to those who were under the age of 21 at  
4 the time of the offense. Prior to ordering a person to participate in  
5 such a program, the court may consult with any person who may  
6 provide useful information on the defendant's physical, emotional and  
7 mental suitability for the visit to ensure that it will not cause any injury  
8 to the defendant. The court also may order that the defendant  
9 participate in a counseling session under the supervision of the  
10 Intoxicated Driving Program Unit prior to participating in the  
11 supervised visitation program. The supervised visitation program shall  
12 be at one or more of the following facilities which have agreed to  
13 participate in the program under the supervision of the facility's  
14 personnel and the probation department:

15 (1) a trauma center, critical care center or acute care hospital  
16 having basic emergency services, which receives victims of motor  
17 vehicle accidents for the purpose of observing appropriate victims of  
18 drunk drivers and victims who are, themselves, drunk drivers;

19 (2) a facility which cares for advanced alcoholics or drug abusers,  
20 to observe persons in the advanced stages of alcoholism or drug abuse;  
21 or

22 (3) if approved by a county medical examiner, the office of the  
23 county medical examiner or a public morgue to observe appropriate  
24 victims of vehicle accidents involving drunk drivers.

25 As used in this section, "appropriate victim" means a victim whose  
26 condition is determined by the facility's supervisory personnel and the  
27 probation officer to be appropriate for demonstrating the results of  
28 accidents involving drunk drivers without being unnecessarily  
29 gruesome or traumatic to the defendant.

30 If at any time before or during a visitation the facility's supervisory  
31 personnel and the probation officer determine that the visitation may  
32 be or is traumatic or otherwise inappropriate for that defendant, the  
33 visitation shall be terminated without prejudice to the defendant. The  
34 program may include a personal conference after the visitation, which  
35 may include the sentencing judge or the judge who coordinates the  
36 program for the court, the defendant, defendant's counsel, and, if  
37 available, the defendant's parents to discuss the visitation and its effect  
38 on the defendant's future conduct. If a personal conference is not  
39 practicable because of the defendant's absence from the jurisdiction,  
40 conflicting time schedules, or any other reason, the court shall require  
41 the defendant to submit a written report concerning the visitation  
42 experience and its impact on the defendant. The county, a court, any  
43 facility visited pursuant to the program, any agents, employees, or  
44 independent contractors of the court, county, or facility visited  
45 pursuant to the program, and any person supervising a defendant  
46 during the visitation, are not liable for any civil damages resulting from



1 injury to the defendant, or for civil damages associated with the  
2 visitation which are caused by the defendant, except for willful or  
3 grossly negligent acts intended to, or reasonably expected to result in,  
4 that injury or damage.

5 The Supreme Court may adopt court rules or directives to  
6 effectuate the purposes of this subsection.

7 (i) In addition to any other fine, fee, or other charge imposed  
8 pursuant to law, the court shall assess a person convicted of a  
9 violation of the provisions of this section a surcharge of \$100, of  
10 which amount \$50 shall be payable to the municipality in which the  
11 conviction was obtained and \$50 shall be payable to the Treasurer of  
12 the State of New Jersey for deposit into the General Fund.

13 (cf: P.L.2002, c.34, s.17)

14  
15 3. R.S.39:4-51 is amended to read as follows:

16 A person who has been convicted of **[violating]** a first or second  
17 violation of section 39:4-50 of this Title, and in pursuance thereof has  
18 been imprisoned in a county jail or workhouse in the county in which  
19 the offense was committed, shall not, after commitment, be released  
20 therefrom until the term of imprisonment imposed has been served. A  
21 person imprisoned in the county jail or workhouse may in the  
22 discretion of the court, be released on a work release program.

23 No warden or other officer having custody of the county jail or  
24 workhouse shall release therefrom a person so committed, unless the  
25 person has been released by the court on a work release program, until  
26 the sentence has been served. A person sentenced to an inpatient  
27 rehabilitation program may upon petition by the treating agency be  
28 released, by the court, to an outpatient rehabilitation program for the  
29 duration of the original sentence.

30 Nothing in this section shall be construed to interfere in any way  
31 with the operation of a writ of habeas corpus, a proceeding in lieu of  
32 the prerogative writs, or an appeal.

33 The <sup>1</sup>**[director]** administrator<sup>1</sup> shall adopt such rules and  
34 regulations to effectuate the provisions of this section as he shall deem  
35 necessary.

36 (cf: P.L.1977, c.29, s.5)

37  
38 4. This act shall take effect immediately.